

The Rules Committee is proposing a major revision of the procedure for withdrawing as attorney of record. Rather than attempting to create a redline version of the proposed amendments, an entire substitute rule is presented for review and comment even though sections of the rule remain unchanged.

Approved by the Rules Committee on March 9, 2010 and released for comment on the website on March 11, 2010

Reporter's Note: The revision to the withdrawal process provides for increased responsibility of the withdrawing attorney concerning notice to the party of the obligation to obtain new counsel or proceed pro se. The requirements when the party is an artificial entity are increased. The rule prescribes both the form of the motion to withdraw and the proposed order to be submitted to the court. The court will serve the executed order on the party. The rule clarifies that a stay of twenty-one days may be imposed when the order of withdrawal is entered but that this stay can be waived in appropriate cases, in order to avoid undue burden on the non-moving party and to ensure that the withdrawal is not made inappropriately to disrupt the case's schedule.

DUCivR 83-1.4 ATTORNEYS - WITHDRAWAL OR REMOVAL OF ATTORNEY

(a) Withdrawal Leaving a Party Without Representation.

(1) No attorney will be permitted to withdraw as attorney of record in any pending action, thereby leaving a party without representation, except upon submission of:

(A) **A Motion to Withdraw as Counsel** in the form prescribed by the court that includes (i) the last known contact information of the moving attorney's client(s), (ii) the reasons for withdrawal, (iii) notice that if the motion is granted and no Notice of Substitution of Counsel has been filed, the client must file a notice of appearance within twenty-one (21) days after entry of the order, unless otherwise ordered by the court, (iv) notice that pursuant to DUCivR 83-1.3, no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (v) certification by the moving attorney that the motion was sent to the moving attorney's client and all parties;¹ and

(B) A proposed **Order Granting Motion to Withdraw As Counsel** in the form prescribed by the court stating that (i) unless a Notice of Substitution of Counsel has been filed, within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, the unrepresented party shall file a notice of appearance, (ii) that no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court, and (iii) that a party who fails to file such a Notice of Substitution of Counsel or Notice of

¹ Annexed to these rules as Appendix ___ is the general form of a Motion to Withdraw as Counsel contemplated by this rule.

Appearance may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.²

(2) No attorney of record will be permitted to withdraw after an action has been set for trial unless (i) the Motion to Withdraw as Counsel includes a certification signed by a substituting attorney indicating that such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes a certification signed by the moving attorney's client indicating that the party is prepared for trial as scheduled and is eligible pursuant to DUCivR 83-1.3 to appear pro se at trial; or (iii) good cause for withdrawal is shown, including without limitation, with respect to any scheduling order then in effect.

(3) Withdrawal may not be used to unduly prejudice the non-moving party by improperly delaying the litigation.

(b) Withdrawal With and Without the Client's Consent

(1) With Client's Consent. Where the withdrawing attorney has obtained the written consent of the client, such consent must be submitted with the motion.

(2) Without Client's Consent. Where the moving attorney has not obtained the written consent of the client, the motion must contain (i) certification that the client has been served with a copy of the motion to withdraw, (ii) a description of the status of the case including the dates and times of any scheduled court proceedings, requirements under any existing court orders, and any possibility of sanctions; and, if appropriate, (iii) certification by the moving attorney that the client cannot be located or, for any other reason, cannot be notified regarding the motion to withdraw.

(c) Procedure After Withdrawal.

(1) Upon entry of an order granting a motion to withdraw, the action shall be stayed until twenty-one (21) days after entry of the order, unless otherwise ordered by the court. The court may in its discretion shorten the twenty-one (21) day stay period.

(2) The court will enter the order and serve it on all parties and the withdrawing attorney's client at the address provided in the Motion for Withdrawal of Counsel, which order will specifically advise the parties of the terms of this rule.

(3) Within twenty-one (21) days after entry of the order, or within the time otherwise required by the court,

(i) any individual whose attorney has withdrawn shall file a notice of pro se appearance or new counsel shall file an appearance on that party's behalf.

(ii) new counsel shall file an appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

(4) After expiration of the stay period, either party may request a scheduling conference or submit a proposed amended scheduling order.

(5) An unrepresented party who fails to appear within twenty-one (21) days after entry of the order, or within the time otherwise required by the court, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

(d) Substitution.

Whenever an attorney of record in a pending case will be replaced by another attorney who is an active member of this court, a Notice of Substitution of Counsel must be filed. The notice must (i) be signed by both attorneys; (ii) include the attorneys' bar numbers; (iii) identify the parties represented; (iv) be

² Annexed to these rules as Appendix ___ is the general form of an Order Granting Motion to Withdraw as Counsel contemplated by this rule.

served on all parties; and, (v) verify that the attorney entering the case is aware of and will comply with all pending deadlines in the matter. Upon the filing of the notice, the withdrawing attorney will be terminated from the case, and the new attorney will be added as counsel of record.